IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 610 of 1990

For Approval and Signature:

HON'BLE **MISS JUSTICE [redacted]**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to civil judge ?

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RADHABHAI NATHALAL - Applicant(s)

Versus

VAHIVATKARTA & OFFICE BEARERS OF BHAVSAR RANGATIS GANTI & 3 - Opponent(s)

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Appearance :

MR BD KARIA for Petitioner No(s).: 1.

MR SURESH M SHAH for Mr.MEHUL S SHAH for Respondents No(s).: 1, 3,4.

UNSERVED-EXPIRED (R) for Respondent No(s).: 2.

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CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT

Date : 08/08/2005

ORAL JUDGMENT

The respondents before this Court are the managing trustees of one Bhavsar Rangatia Gnati. The respondent no.2 is reported unserved as he has expired. Leave to delete the respondent no.2.

Feeling aggrieved by the judgment and order dated 22nd February, 1990 passed by the learned Joint District Judge, Jamnagar in Civil Regular Appeal No. 6 of 1984, the respondent, defendant in Regular Civil Suit No. 670 of 1979, has preferred the present Revision Application under Section 29 (2) of the Bombay Rents, Hotel & Lodging House Rates Control Act, 1947 {hereinafter referred to as, "**the Rent Act**'}.

The respondents-plaintiffs [hereinafter referred to as, "**the Trust**"] is the owner of a building bearing Municipal House No. 1065, situated at Ward No.5, Jamnagar. One of the shops in the said building was leased to one Nathalal Karsandas, the predecessor of the defendant for a monthly rent of Rs.12/=. After the death of the said tenant-Nathalal, the defendant became the tenant, as envisaged by Section 5 [11](c)(ii) of the Rent Act. The Trust instituted Regular Civil Suit No. 670 of 1979 for recovery of possession of the suit shop on the grounds that the defendant had unlawfully sublet the suit shop to one Laxmidas Kakubhai Datani, and that the Trust required the suit shop reasonably and *bona fide* for the purpose of the Trust. The suit was contested by the defendant vide written statement Exh.9. The defendant

denied the allegations made in the plaint. She maintained that during the life time of the deceased Nathalal, she was carrying on the business with him and after the death of the said Nathalal, she continued to carry on the business in the suit shop. The learned Civil Judge, by judgment and order dated 30th July, 1983, dismissed the suit and passed decree in favour of the defendant. Feeling aggrieved, the Trust preferred Civil Regular Appeal No. 6 of 1985 in the Court of learned District Judge, Jamnagar. The learned Joint District Judge allowed the Appeal by the *impugned* judgment and order dated 22nd February, 1990. Therefore, the present Revision Application.

It was the specific case of the Trust that since the death of the tenant-Nathalal, the defendant had unlawfully sublet the suit shop to one Laxmidas Kakubhai Datani and that the said Laxmidas Datani was carrying on the business in the suit shop. The notice of termination of tenancy given to the defendant was replied by her on 11th August, 1979 [*Exh.19*]. In the said reply, she denied the allegations of unlawful subletting of the suit shop. In the written statement also, she specifically denied that she had sublet the suit shop, as alleged. However,

no case was made out by her that the alleged sub-tenant was her partner in the business. For the first time in her oral evidence, she came out with a defence that the alleged sub-tenant Laxmidas Datani was her partner; that the partnership deed was executed on 18th January, 1979 and that the partnership was dissolved on 26th February, 1980. She also produced partnership deed dated 18th January, 1978 [*Exh.23*] and the Deed of Dissolution of Partnership dated 26th February, 1980 [*Exh.24*]. The learned Civil Judge believed the said partnership to be genuine and held that the defendant had a right to continue the business and had a right to take a partner in the business. The lower appellate court held that the partnership was sham and bogus and that it was a camouflaged devised to conceal the unlawful subletting/transfer of the suit shop.

I am of the opinion that the lower appellate Court has rightly held that the alleged partnership was sham and bogus and was a camouflage. As recorded hereinabove, the defendant did not refer to any partnership or that the alleged sub-tenant Laxmidas Datani was her partner in business, either in her reply [*Exh.19*] to the suit notice or in written statement

[*Exh. 9*]. Besides, the terms and conditions of the partnership also give out the reat nature of the transaction. Under the said partnership agreement, the partnership business was to be carried on in the name of the aforesaid Laxmidas Datani; the investment was to be made by the said Laxmidas Datani and the defendant had a 10 per cent share in the profits of the business. She had no liability in the event there were any loss in the business. Besides, in her oral evidence she did say that since the death of the tenant Nathalal, the business was closed. Three years thereafter, she started the business in partnership with the aforesaid Laxmidas Datani. The lower appellate court has, keeping in view the aforesaid salient features of the partnership, inferred that the partnership was not genuine and that the defendant had unlawfully sublet or transferred the suit shop to the said Laxmidas Datani. Therefore, the order of eviction.

No ground for interference is made out. The Revision Application is dismissed with cost. Rule is discharged. *Interim* relief stands vacated.

{Miss R.M Doshit, J.}

*Prakash**